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Attorneys for Defendant
The ServInt Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Barry Rosen,

Plaintiff,

v.

The ServInt Corporation, and Does I
through 10,

Defendants.

Case No. CV 0-01940 MMM (SHx)

**DEFENDANT THE SERVINT
CORPORATION'S ANSWER TO
COMPLAINT FOR DAMAGES FOR
VIOLATION OF COPYRIGHT**

DEMAND FOR JURY TRIAL

Defendant The ServInt Corporation ("Defendant") responds as follows to Plaintiff Barry Rosen's ("Plaintiff") Complaint for Damages for Violation of Copyright ("Complaint").

ANSWER

Defendant denies each and every allegation in Plaintiff's Complaint except for those expressly admitted below.

JURISDICTION AND VENUE

1. The allegations of Paragraph 1 are legal conclusions to which no response is required. To the extent a response is required, Defendant lacks

1 knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 1, and on that basis denies them.

3 2. The allegations of Paragraph 2 are legal conclusions to which no
4 response is required. To the extent a response is required, Defendant lacks
5 knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 2, and on that basis denies them.

7 3. The allegations of Paragraph 3 are legal conclusions to which no
8 response is required. To the extent a response is required, Defendant lacks
9 knowledge or information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 3, and on that basis denies them.

11 4. Defendant admits that The ServInt Corporation is incorporated in the
12 State of Virginia and that it does business in the State of California. Except as so
13 expressly admitted, Defendant denies the allegations in Paragraph 4.

14 5. Defendant lacks knowledge of or information sufficient to form a
15 belief as to the truth of the allegations in Paragraph 5, and on that basis denies
16 them.

17 6. Defendant lacks knowledge of or information sufficient to form a
18 belief as to the truth of the allegations in Paragraph 6, and on that basis denies
19 them.

20 **FIRST CLAIM FOR RELIEF**

21 7. Defendant hereby incorporates as though fully set forth herein its
22 answers to Paragraphs 1-6.

23 8. Defendant lacks knowledge of or information sufficient to form a
24 belief as to the truth of the allegations in Paragraph 8, and on that basis denies
25 them.

26 9. Defendant lacks knowledge of or information sufficient to form a
27 belief as to the truth of the allegations in Paragraph 9, and on that basis denies
28 them.

1 **10.** Defendant lacks knowledge of or information sufficient to form a
2 belief as to the truth of the allegations in Paragraph 10, and on that basis denies
3 them.

4 **11.** The allegations of Paragraph 11 are legal conclusions to which no
5 response is required. To the extent a response is required, Defendant lacks
6 knowledge or information sufficient to form a belief as to the truth of the
7 allegations in Paragraph 11, and on that basis denies them.

8 **12.** Defendant lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations in Paragraph 12, and on that basis denies them.

10 **13.** Defendant admits that Plaintiff has reported some claims of copyright
11 infringement to ServInt. Except as so expressly admitted, Defendant denies the
12 allegations in Paragraph 13.

13 **14.** Defendant denies the allegations in Paragraph 14.

14 **15.** The allegations of Paragraph 15 are legal conclusions to which no
15 response is required. To the extent a response is required, Defendant denies the
16 allegations in Paragraph 15.

17 **16.** Defendant denies the allegations in Paragraph 16.

18 **17.** The allegations of Paragraph 17 are legal conclusions to which no
19 response is required. To the extent a response is required, Defendant lacks
20 knowledge or information sufficient to form a belief as to the truth of the
21 allegations in Paragraph 17, and on that basis denies them.

22 **18.** The allegations of Paragraph 18 are legal conclusions to which no
23 response is required. To the extent a response is required, Defendant denies the
24 allegations in Paragraph 18.

25 **19.** Defendant denies the allegations in Paragraph 19.

26 **20.** The allegations of Paragraph 20 are legal conclusions to which no
27 response is required. To the extent a response is required, Defendant lacks
28 knowledge or information sufficient to form a belief as to the truth of the

1 allegations in Paragraph 20, and on that basis denies them.

2 **21.** The allegations of Paragraph 21 are legal conclusions to which no
3 response is required. To the extent a response is required, Defendant lacks
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations in Paragraph 21, and on that basis denies them.

6 **22.** The allegations of Paragraph 22 are legal conclusions to which no
7 response is required. To the extent a response is required, Defendant lacks
8 knowledge or information sufficient to form a belief as to the truth of the
9 allegations in Paragraph 22, and on that basis denies them.

10 **23.** The allegations of Paragraph 23 are legal conclusions to which no
11 response is required. To the extent a response is required, Defendant lacks
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations in Paragraph 23, and on that basis denies them.

14 **PRAYER FOR RELIEF**

15 Defendant admits that Plaintiff seeks the relief set forth in his Prayer for
16 Relief. Defendant, however, denies that Plaintiff is entitled to any such relief.

17 **SEPARATE AND ADDITIONAL DEFENSES**

18 Defendant alleges the following separate and additional defenses.

19 **FIRST SEPARATE AND ADDITIONAL DEFENSE**
20 **(Failure to State a Claim)**

21 **1.** The Complaint, and each and every claim alleged therein, fails to state
22 facts sufficient to constitute a cause of action upon which relief may be granted.

23 **SECOND SEPARATE AND ADDITIONAL DEFENSE**
24 **(Plaintiff Does Not Own Copyright)**

25 **2.** Plaintiff does not own copyright(s) for the images allegedly infringed
26 and/or has not registered such copyright(s) and, therefore, cannot bring claims of
27 infringement.
28

1 **THIRD SEPARATE AND ADDITIONAL DEFENSE**
2 **(Defective Notice of Copyright Infringement)**

3 3. Plaintiff submitted defective notifications of copyright infringement to
4 Defendant and, therefore, cannot bring claims of infringement for Plaintiff's alleged
5 copyrights.

6 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**
7 **(Non-Infringement)**

8 4. Defendant has not infringed, whether directly, contributorily,
9 vicariously, or by inducement, and is not now infringing, whether directly,
10 contributorily, vicariously, or by inducement, Plaintiff's alleged copyright rights.

11 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**
12 **(Digital Millennium Copyright Act)**

13 5. Defendant is entitled to the protection afforded by the Digital
14 Millennium Copyright Act's safe harbor, 17 U.S.C. §§ 512 *et seq.*

15 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**
16 **(No Entitlement to General Damages)**

17 6. Plaintiff's claim for general damages is not authorized by statute and is
18 therefore improper.

19 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**
20 **(No Entitlement to Statutory Damages and Interest)**

21 7. Plaintiff's claim for statutory damages and interest is not authorized by
22 statute and is therefore improper.

23 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**
24 **(Fault of Others)**

25 8. Plaintiff is barred from obtaining any relief sought in the Complaint
26 because, to the extent that Plaintiff has suffered any damage or injury, such damage
27 or injury was not caused by Defendant, but was caused by the intentional or
28 negligent acts, omissions, or misconduct of others.

**NINTH SEPARATE AND ADDITIONAL DEFENSE
(Failure to Mitigate)**

9. Defendant is informed and believes, and based thereon alleges, that if Plaintiff has incurred any loss as a result of the activities alleged in the Complaint, he has failed to take proper measures to mitigate any such loss.

**TENTH SEPARATE AND ADDITIONAL DEFENSE
(Laches)**

10. Each and every cause of action alleged in the Complaint is barred by the doctrine of laches.

**ELEVENTH SEPARATE AND ADDITIONAL DEFENSE
(Unclean Hands)**

11. Each and every cause of action alleged in the Complaint is barred by the doctrine of unclean hands.

**TWELFTH SEPARATE AND ADDITIONAL DEFENSE
(Innocent Infringement – 17 U.S.C. § 504(c)(2))**

12. Without admitting that any infringement has taken place, to the extent that Plaintiff seeks to recover statutory damages provided under the Copyright Act, any such damages are limited to 17 U.S.C. § 504(c)(2).

**THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE
(Right to Assert Additional Defenses)**

13. Defendant reserves the right to seek leave to amend this Answer to set forth additional defenses based on its ongoing investigation and discovery into the matters alleged in the Complaint.

PRAYER FOR RELIEF

Wherefore, Defendant requests that this Court:

1. Deny in its entirety the Prayer for Relief in Plaintiff's Complaint;
2. Dismiss with prejudice Plaintiff's Complaint and enter judgment in favor of Defendant;

1 3. Award Defendant costs of suit and attorneys' fees incurred in defense
2 of this action; and,

3 4. Order such other relief as the Court deems proper.
4

5 Dated: May 7, 2010

COOLEY LLP
MICHAEL A. ATTANASIO (151529)
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8
9 /s/ Joseph S. Leventhal
10 Joseph S. Leventhal (221043)
11 Attorneys for Defendant
12 THE SERVINT CORPORATION
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38.1, Defendant hereby requests a jury trial as to all the issues to which it is so entitled.

Dated: May 7, 2010

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/s/ Joseph S. Leventhal

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